

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 GLORIA A. BARRIOS
Supervising Deputy Attorney General
4 State Bar No. 94811
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2540
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the First Amended Accusation
12 Against:

13 **DEBORAH SUE RUSSELL, AKA**
14 **DEBORAH SUE HERBERT**
2063 N. Victoria Ave.
Upland, CA 91784

15 **Registered Nurse License No. 625972**

16 Respondent.

Case No. 2011-584

FIRST AMENDED
A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this First Amended Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about September 15, 2003, the Board of Registered Nursing (Board) issued
24 Registered Nurse License No. 625972 to Deborah Sue Russell, aka Deborah Sue Herbert
25 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to
26 the charges brought herein and will expire on January 31, 2013, unless renewed.

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1 “(c) Be convicted of a criminal offense involving the prescription, consumption, or self-
2 administration of any of substances described in subdivision a) and b) of this section, or the
3 possession of, or falsification of a record pertaining to, the substances described in subdivision (a)
4 of this section, in which event the record of the conviction is conclusive evidence thereof.

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6 “(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in
7 any hospital, patient, or other record pertaining to the substances described in subdivision (a) of
8 this section.”

9 7. Section 2764 provides, in pertinent part, that the expiration of a license shall not
10 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
11 to render a decision imposing discipline on the license. Under section 2811, subdivision (b), the
12 Board may renew an expired license at any time within eight years after the expiration.

13 8. Section 2770.11 states:

14 “(a) Each registered nurse who requests participation in a diversion program shall agree to
15 cooperate with the rehabilitation program designed by the committee and approved by the
16 program manager. Any failure to comply with the provisions of a rehabilitation program may
17 result in termination of the registered nurse’s participation in a program. The name and license
18 number of a registered nurse who is terminated for any reason, other than successful completion,
19 shall be reported to the Board’s enforcement program.

20 “(b) If the program manager determines that a registered nurse, who is denied admission
21 into the program or terminated from the program, presents a threat to the public or his or her own
22 health and safety, the program manager shall report the name and license number, along with a
23 copy of all diversion records for that registered nurse, to the board’s enforcement program. The
24 board may use any of the records it receives under this subdivision in any disciplinary
25 proceeding.”

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1 **REGULATORY PROVISION**

2 9. California Code of Regulations, title 16, section 1444 states:

3 "A conviction or act shall be considered to be substantially related to the qualifications,
4 functions or duties of a registered nurse if to a substantial degree it evidences the present or
5 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
6 safety, or welfare"

7 **CONTROLLED SUBSTANCES**

8 10. "Hydromorphone", an opium derivative, is a Schedule II controlled substance as
9 designated by Health and Safety Code section 11055(b)(1)(k) and is categorized as a dangerous
10 drug pursuant to section 4022. Dilaudid is a trade name (Knoll) for the narcotic substance
11 hydromorphone.

12 11. "Tramadol", at this time (Ultram) is not considered a narcotic. Although tramadol is
13 an opiate drug (similar to morphine), it does not seem to be as addictive as other opiates. Also,
14 tramadol is not classified as a narcotic according to the Controlled Substances Act. However,
15 research has recently shown that tramadol works similarly to morphine, and there have been
16 reports of abuse and dependence on the drug.

17 **COST RECOVERY**

18 12. Section 125.3 provides, in pertinent part, that the Board may request the
19 administrative law judge to direct a licensee found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct/False Records/Dangerous Use of Drugs)**

24 13. Respondent is subject to disciplinary action under sections 2761, subdivision (a),
25 2762, subdivision (b), and (e), in that Respondent tested positive for a dangerous drug, caused
26 injury to herself, and posed a danger to the public as follows:

27 a. On or about October 31, 2008, a complaint was filed against Respondent for
28 medicating a patient without informing the patient, while she was employed as a Registered

1 Nurse at Pomona Valley Hospital Medical Center located at 1798 N. Garey Avenue, Pomona,
2 California 91767. On or about October 10, 2008, Respondent failed to document the medication
3 on the patient's Medication Administration Record (MAR). Following an investigation of
4 Respondent's narcotic medication dispensing records, involving different patients, it was found
5 that Respondent could not account for 22 of 32 doses of Dilaudid. Respondent documented
6 removing these doses from the MedSelect pharmacy dispensing system at more frequent intervals
7 than ordered. Respondent failed to document these on the Medication Administration Records
8 (MARs) or the nurse's notes and when asked to explain the multiple discrepancies, was not able
9 to provide a reasonable explanation. Respondent tested positive for Hydromorphone.
10 Respondent entered the Board's Diversion Program.

11 b. On or about January 5, 2010. The Board's Diversion Evaluation Committee
12 terminated Respondent from Diversion as a Public Safety Risk due to her positive test for
13 Tramadol, one dilute, two out of ranges and late paper work within the last three months.

14 c. On or about April 13, 2011, after pleading guilty, Respondent was convicted of one
15 misdemeanor count of violating Vehicle Code section 23103, subd. (a) [wet and reckless], in a
16 criminal proceeding entitled *The People of the State of California v. Deborah Sue Russell* (Sup.
17 Court of California, County of Riverside, 2010, Case No. INM10006330). The underlying
18 circumstance of the criminal conviction is that Respondent was arrested on or about August 15,
19 2010, for driving under the influence in violation of Vehicle Code sections 23152 subd. a) and b).

20 d. On or about May 29, 2009, Respondent tested positive for alcohol. Respondent
21 missed a call on June 21, 2009 and a test on June 23, 2009. Respondent was told at her Diversion
22 Evaluation Committee on September 25, 2009, that she was to have 100 per cent compliance for
23 30 days then she could request to return to work. On or about December 23, 2008, Respondent
24 tested positive for consumed alcohol.

25 e. On or about September 24, 2009, Respondent had a dilute urine screen, an out of
26 range on October 1, 2009, and the positive Tramadol on November 18, 2009.

27 f. On or about December 19, 2009, Respondent was mandated to 6 months inpatient
28 treatment.

1 g. On or about January 5, 2010, Respondent was terminated from the California Board
2 of Registered Nursing Diversion Program with the following classification of Public Risk for
3 failing to comply with provisions of the rehabilitation plan.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Conviction of Substantially Related Crime)**

6 14. Respondent is subject to disciplinary action under sections 2761, subdivision (f), in
7 conjunction with California Code of Regulations, Title 16, section 1444, 2762, subdivision (c) in
8 that, Respondent was convicted of a crime that is substantially related to the qualifications,
9 functions and duties of a registered nurse and that involve the consumption of alcohol.
10 Complainant refers to and by this reference incorporates the allegations set forth in paragraph 13,
11 subparagraph c, inclusive, as though set forth fully.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct/False Records/Failure to Follow Hospital Policies)**

14 15. Respondent is subject to disciplinary action under sections 2761, subdivision (a),
15 2762, subdivision (e) in that Respondent medicated a patient without informing the patient and
16 failed to document the medication on the patient's MAR as required by hospital policies.
17 Complainant refers to, and by this reference incorporates, the allegations set forth above in
18 paragraph 13, subparagraph (a), as though set forth fully.

19 **DISCIPLINARY CONSIDERATIONS**

20 16. On or about October 28, 1987, after pleading guilty, Respondent was convicted of
21 one misdemeanor count of violating Penal Code section 415 [disturbing the peace], in a criminal
22 proceeding entitled *The People of the State of California v. Deborah Sue Herbert* (Municipal
23 Court of California, County of Los Angeles, 1987, Case No. 87MO2876). The underlying
24 circumstance of the criminal conviction is that Respondent was arrested on or about March 24,
25 1987, for possession of controlled substances in violation of Health and Safety Code section
26 11350(a).

27 17. On or about October 29, 1987, Respondent was placed on Diversion per Penal Code
28 section 1000 in a criminal proceeding entitled *The People of the State of California v. Deborah*

1 *Sue Herbert* (Municipal Court of Whittier Judicial District, County of Los Angeles, 1987, Case
2 No. 871539). The underlying circumstance of the criminal action is that Respondent
3 was arrested on or about March 31, 1987, for possession of controlled substances in violation of
4 Health and Safety Code section 11350(a).

5 18. On or about June 7, 1991, after pleading guilty, Respondent was convicted of one
6 misdemeanor count of violating Penal Code section 484 [petty theft], in a criminal proceeding
7 entitled *The People of the State of California v. Deborah Sue Herbert* (Municipal Court of Citrus
8 Judicial District, County of Los Angeles, 1991, Case No. 91MO6358). The underlying
9 circumstance of the criminal conviction is that Respondent was arrested on or about June 28,
10 1988, for shoplifting and possession of controlled substances in violation of Health and Safety
11 Code section 11350(a) at a department store.

12 19. On or about July 5, 1991, Respondent was convicted of one felony count of violating
13 Health and Safety Code section 11350(a) [possession of heroin], in a criminal proceeding entitled
14 *The People of the State of California v. Deborah Sue Herbert* (Superior Court, County of Los
15 Angeles, 1991, Case No. A890416).

16 20. On or about June 5, 2000, Respondent was convicted of one felony count of violating
17 Vehicle Code section 23153(A) [driving under the influence with bodily injury] in a criminal
18 proceeding entitled *The People of the State of California v. Deborah Sue Herbert Russell*
19 (Superior Court, County of Los Angeles, 1991, Case No. VA046486). The case was dismissed
20 pursuant to Penal Code section 1203.4.

21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board issue a decision:

24 1. Revoking or suspending Registered Nurse License No. 625972, issued to Deborah
25 Sue Russell, aka Deborah Sue Herbert;

26 2. Ordering Deborah Sue Russell to pay the Board the reasonable costs of the
27 investigation and enforcement of this case, pursuant to Business and Professions Code section
28 125.3; and

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3. Taking such other and further action as deemed necessary and proper.

DATED: August 10, 2011

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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